IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Narayan Singh & Another Vs. State of Raj.
(D.B. Criminal Appeal No.309/2002)

D. B. Criminal Appeal under Sec.374(2) Cr.P.C. against the judgment dated 12-2-2002 in Sessions Case No.189/2001 passed by Sh. Shiv Singh Chauhan, RHJS, Additional Sessions Judge (Fast Track) No.2, Jhalawar.

Date of Judgment: July 05, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Arvind Kumar Gupta] for the appellants.
Mr. J.R. Bijarnia]
Miss. Nisha Sharma]
Mr. Harsh Saini]
Mr. Viredra Singh]
Mr. Ravi Yadav]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Narayan Singh and Ganga Ram (appellants herein) along with Nain Singh were put to trial before the learned Additional Sessions Judge (Fast Track) No.2, Jhalawar, who vide judgment dated February 12, 2002 convicted and sentenced the appellants as under:-

Narayan Singh:
U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer two months simple imprisonment.

U/s.449 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.500/-, in default to further suffer one month simple imprisonment.

U/s.3/25 Arms Act:

To suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer one month simple imprisonment.

Ganga Ram:

U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer two months simple imprisonment.

U/s.449 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.500/-, in default to further suffer one month simple imprisonment.

All sentences were directed to run concurrently.
Charges against co-accused Nain Singh were however not found established and he stood acquitted.

2. It is the prosecution case that on May 6,2001 at 9.20 AM Ramlal (PW.4) reached to the Police Station Pidawa and orally informed that in the preceding night around 2 AM Narayan Singh, Ganga Ram and Nain Singh scaled the wall of Narwar's house. Narain Singh then called Narwar to come out. When Udai Singh intervened Narain Singh opend fire at Udai Singh with 12 Bore country made gun and killed him. The oral information supplied by Ram Lal was taken down and case under sections 452, 302/34 IPC was registered and investigation commenced. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2, Jhalawar. Charges under sections 449, 302, 302/34 IPC and 3/25 Arms Act were

framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation under section 313 Cr.P.C., the appellants claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions while acquitting co-accused Nain Singh convicted and sentenced the appellants as indicated herein above.

3. Having carefully pondered over the submissions advanced before us we notice that death of Udai Singh was homicidal in nature. As per postmortem report (Ex.P-1) following ante mortem injuries were found on the dead body :-

> Multiple gun shot injuries by pellets of size .2cm x .2cm x .3cm x 3cm on Rt.shoulder, lower neck on Rt.side and upper part of Rt.side of chest, total no of injuries 80.

Dr. Arun Kumar Sharma (PW.1) who performed autopsy on the dead body opined that the cause of death was hemorrhage and psychological shock as a result of gun shot injuries.

4. The prosecution case is founded on the sole testimony of Ganga Bai (PW.11). We have closely scanned her evidence. In her deposition she stated that three days prior to Holi festival around 2 AM while she and her brother Udai Singh were sleeping in her house, Narain Singh, Ganga Ram and Nain Singh entered the house by scaling the wall. Narain Singh had a gun whereas Ganga Ram and Nain Singh had sword and lathis. Ganga Ram asked Narwar (son of Ganga Bai) to come out. Udai Singh then intervened and said that why he was uttering such words. Ganga Ram then exhorted Narain Singh to open fire. Narain Singh opened fire that hit Udai Singh who died on the spot. Ganga Ram hurled abuses and slapped her. She then

called Ram Lal and narrated the incident to him. In her cross examination she deposed that Ganga Ram was swinging sword and Narain Singh was quietly standing having lathi in his hand.

5. It does not logically follow from the evidence of Ganga Bai that appellant Ganga Ram even though had a sword would only slap her. We find inescapable features in the testimony of Ganga Bai in so far as it relates to appellant Ganga Ram is concerned. The evidence is not sufficiently weighty to produce belief beyond reasonable doubt against appellant Ganga Ram. Possibility of over implication of appellant Ganga Ram therefore cannot be ruled out. We fail to understand that whereas in the similar circumstances co-accused Nain Singh had been acquitted then why appellant Ganga Ram was found involved in the crime.

6. Throughout the web of criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt. The guilt against appellant Ganga Ram could not be established beyond reasonable doubt.

7. So far as charge against appellant Narain Singh is concerned the testimony of Ganga Bai is consistent and it could not be shattered in the cross examination. The evidence gets corroboration from the testimony of Tej Singh Hada IO (Pw.13) to whom appellant Narain Singh gave information (Ex.P-20) under Section 27 Evidence Act to get the gun allegedly used in the crime, recovered on the basis of disclosure statement of Narain Singh. The gun got recovered by recovery memo Ex.P-17. Narain Singh did not have licence to possess the gun. This fact was certified by Tehsildar in the report (Ex.P-23). District Magistrate Jhalawar accorded

sanction (Ex.P-22) to prosecute Narain Singh under the Arms Act.

8. Learned counsel although criticised the finding arrived as against appellant Narain Singh from various angles, we find no substance in the submissions. From the testimony of Ganga Bai participation of appellant Narain Sing in the crime is established.

9. For the reasons aforementioned, we dispose of the instant appeal in the following terms:-

(i) We allow the appeal of appellant Ganga Ram and acquit him of the charges under sections 302/34 and 449 IPC. Appellant Ganga Ram, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(ii) We dismiss the appeal of appellant Narayan Singh and maintain his conviction and sentence under sections 302, 449 IPC and Sec.3/25 Arms Act.

(iii)The impugned judgment of learned trial court stands modified as indicated above.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

arn/